

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

TRANSCRIPT OF PROCEEDINGS

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:
UNITED STATES OF AMERICA, : CRIMINAL ACTION
: NO. 2:22-cr-00163-2
vs. :
: :
SIVARAMAN SAMBASIVAM, : August 17, 2023
: :
Defendant. :
:
-----x

BOND HEARING

BEFORE THE HONORABLE IRENE C. BERGER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: MR. JONATHAN TYLER STORAGE
MR. ERIK S. GOES
United States Attorney's Office
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300 Virginia Street, East
Charleston, WV 25301

For the Defendant: MS. SUSAN M. ROBINSON
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Court Reporter: Lisa A. Cook, RPR-RMR-CRR-FCRR

Proceedings recorded by mechanical stenography; transcript produced by computer.

PROCEDINGS

THE CLERK: The matter before the Court is the
United States vs. Sambasivam, Case Number 2:22-cr-163-2,
scheduled for bond hearing.

THE COURT: Good afternoon, everyone.

Counsel, would you note your appearance for the record, please.

MR. STORAGE: Good afternoon, Your Honor.

9 Jonathan Storage on behalf of the Government. And to my
10 right is -- or left is Erik Goes.

11 MS. ROBINSON: Good afternoon, Your Honor. Susan
12 Robinson on behalf of Mr. Sambasivam who is here present in
13 the courtroom.

14 THE COURT: All right, counsel, we are here for a
15 hearing on the objections which the defendant has filed to
16 the recommendations of the Magistrate Judge regarding his
17 terms of release.

18 I, in setting this hearing, entered an order advising
19 the parties that I wanted you to be prepared to discuss the
20 relevant portions of Section 3142.

21 In order to give me some direction, or additional
22 direction, in looking at the statute and the defendant's
23 argument regarding conditions of release, and specifically
24 whether or not he should have his passport returned to him,
25 I want you to give some consideration to the language in

1 3142 (b) and to let me know your position relative to that
2 initial paragraph in Section 3142(b). And we'll start with
3 that here this afternoon.

4 MS. ROBINSON: Thank you, Your Honor. Do you want
5 to hear from Mr. Sambasivam first?

6 THE COURT: That's fine.

7 MS. ROBINSON: Your Honor, first, I would like to
8 reserve our objections to the Court's ruling concerning its
9 authority to continue Mr. Sambasivam on bond given the fact
10 that charges against him have been dismissed and he's no
11 longer pending any offense in the jurisdiction.

12 THE COURT: I understand that and I certainly want
13 to preserve that to you.

14 In my reading of the statute, I took into consideration
15 the fact that the statute which allows for bail pending
16 appeal, it specifically mentions the statute regarding the
17 appeals which, of course, includes dismissals which can be
18 on appeal.

19 And that statute then, 3143, throws us back to 3142.
20 And it is my position that if we read it simply to be
21 inapplicable just because there are no charges, then we are
22 making a nullity out of the reference of 3143 to 3142. And
23 I think that's set forth in the opinion.

24 But since you lawyers are here, I wanted to let you
25 know, at least to some extent, what my thinking was. And I

1 certainly preserve an objection and exception for you to
2 that ruling. The statute, in my opinion, could certainly be
3 less ambiguous, Ms. Robinson.

4 MS. ROBINSON: Yes, Your Honor.

5 And I understand it's also the case that not many
6 defendants are in the position of Mr. Sambasivam and there
7 is little authority on the issue.

8 I would also like to, depending on the outcome of this
9 hearing, reserve the right or request the Court to allow us
10 to brief the constitutionality of that statute as applied to
11 Mr. Sambasivam. In the event an appeal would need to be
12 taken, we'd like to be able to raise both of those issues at
13 the same time before the Fourth Circuit if necessary.

14 THE COURT: All right. You are, to some extent,
15 making reference to the comment in the footnote of my
16 opinion.

17 MS. ROBINSON: That's correct, Your Honor. We
18 believe that it does, as the Court has correctly noted,
19 continuation of Mr. Sambasivam on bond depriving him of the
20 liberty and ability to travel, including the ability to
21 travel to practice his religion, could impede, like as
22 specifically relevant to him and as applied to him, could
23 deprive him of certain constitutional rights.

24 And, so, that would be what we -- depending on the
25 outcome of this hearing, we may ask the Court to be able to

1 brief to the Court to take up before the Fourth Circuit.

2 THE COURT: All right. I understand.

3 MS. ROBINSON: Specifically, with regard to
4 3142(b), Your Honor, Mr. Sambasivam believes that the United
5 States has not satisfied any of its burden to establish that
6 there needs to be any conditions imposed upon Mr. Sambasivam
7 at this point in time and, given the Court's hearing, other
8 than those that would be either released on his own
9 recognizance or released on an unsecured bond without
10 conditions.

11 Given the factors of (g), which I understand the Court
12 would consult, there's not a single factor that indicates
13 Mr. Sambasivam is a danger to the community or a flight
14 risk.

15 So, therefore, none of those first initial threshold
16 requirements have been met by the Government here to require
17 the hearing.

18 And then we move on to, assuming we get past that,
19 whether there's a judicial determination that additional
20 conditions need to be in place to ensure that Mr. Sambasivam
21 will reasonably appear before this Court in the unlikely
22 event, given the deferential standard that the appellate
23 court would have to give to this Court's ruling dismissing
24 his case, in the unlikely event that he would ever take --
25 he would ever face charges in this district again.

1 And if the Court would like, I don't know if you want
2 to hear from the Government first as to what they deem
3 relevant to believe he is unlikely to appear or whether you
4 want me to address all those factors first.

5 THE COURT: I will let the Government respond
6 because we don't get to those factors until we get past that
7 initial language in 3142(b) in my opinion.

8 MS. ROBINSON: I'm in agreement with that, Your
9 Honor. I believe it's the burden of the United States to at
10 least make those threshold findings or to support those by
11 evidence.

12 THE COURT: All right.

13 Mr. Storage.

14 MR. STORAGE: So thank you, Your Honor.

15 I, I will first state that as it relates to the
16 constitutionality issue that Your Honor raised in her
17 footnote and the order setting this hearing that with Ms.
18 Robinson raising that objection here and making those
19 arguments, I don't necessarily know that briefing on the
20 constitutionality issue is necessary here if there's
21 ultimately going to be an appeal.

22 I think that that can be handled by the Fourth Circuit,
23 especially since Your Honor has already ruled that facially
24 on the statute there is, there is jurisdiction of this
25 matter presently.

1 So unless the Court would be prepared to rule that the
2 statute is simply unconstitutional, I don't think briefing
3 is, is necessary unless the Court would be leaning in that
4 direction.

5 As it relates to 3142(b), as a preliminary matter, I
6 will note that there is some ambiguity that I'd like to
7 address with the Court, one of which is that the judicial
8 officer shall order the pre-trial release of the person on
9 personal recognizance, or upon the execution of an unsecured
10 appearance bond in an amount specified by the Court, subject
11 to the condition that they will not commit certain crimes
12 and so on and so forth.

13 I would like to point out, though, that there isn't
14 really a standard in that paragraph that would suggest
15 whether the Court should do it on personal recognizance
16 versus an unsecured bond. It seems to be discretion of the
17 Court. And that if there is an unsecured bond and
18 conditions applied, the factors then that are later in the
19 statute need to come up.

20 So for me to even be able to address the standards in
21 (b), assuming that there would be an unsecured bond present,
22 I would have to go through the latter parts of the statute
23 to address, for instance, Paragraph (g), (b), (c), those
24 types of things.

25 So I would like to address the other factors that would

1 inform the Court on whether or not there is a, a reason to
2 have conditions or a combination of conditions that would
3 further make it likely that the defendant would appear for
4 any future proceedings before this Court.

5 THE COURT: I understand your position, Mr.
6 Storage, to a certain extent.

7 The statute, as it reads -- and I'll put the language
8 on the record.

9 "The judicial officer shall order the pre-trial release
10 of the person on personal recognizance, or upon execution of
11 an unsecured appearance bond in an amount specified by the
12 Court, subject to the condition that the person not commit a
13 federal, state, or local crime during the period of release
14 and subject to the condition that the person cooperate in
15 the collection of a DNA sample from the person if the
16 collection of such a sample is authorized pursuant to
17 Section 3 of the DNA Analysis Backlog Elimination Act of
18 2000 unless --"

19 That's it. Those are the -- that's the condition set
20 forth in the statute, that of not violating the law and
21 subjecting to the collection of DNA samples unless the
22 judicial officer determines that such release will not
23 reasonably assure the appearance of the person as required
24 or will endanger the safety of any other person or the
25 community.

1 And it is that initial portion of the statute that I
2 don't think has been addressed, from what I can tell, from
3 the Magistrate Court's order.

4 In other words, as I read that, we don't get to those
5 conditions unless there is a determination by the Court that
6 a personal recognizance or unsecured appearance bond with
7 the condition that he not violate the law and that he
8 subject himself to the collection of DNA samples. Unless we
9 find that that's not sufficient, we don't get to the
10 conditions.

11 MR. STORAGE: With, with respect, Your Honor, the
12 Government disagrees with that review.

13 THE COURT: All right.

14 MR. STORAGE: We would recommend that the default
15 would be personal recognizance or unsecured bond meeting the
16 conditions of what Your Honor has pointed out unless these
17 other conditions exist that would maybe raise doubts of the
18 judicial officer, in this case Your Honor, about whether or
19 not the defendant would appear.

20 I, as the Government's representative, have factors
21 that if I am able to produce them to you today I think would
22 render that "unless" active.

23 THE COURT: Uh-huh.

24 MR. STORAGE: So if I, if I can go forward with my
25 argument, I think you'll see that we will get past Paragraph

1 (b) .

2 THE COURT: All right. I will hear you. And I'm
3 not sure that we have a different understanding of the
4 statute.

5 Go ahead, please.

6 MR. STORAGE: Okay.

7 As Your Honor is aware, appeal is pending before the
8 Fourth Circuit with respect to the Court's dismissal of 10
9 of the 14 criminal charges contained in the superseding
10 indictment. And should the dismissal of those 10 charges be
11 affirmed on appeal, the dismissal would be with prejudice
12 and the defendant will cease to be a defendant in the
13 present proceedings.

14 The Court has already ruled in its Memorandum Opinion
15 and Order that 18, United States, Section 3143(c) requires
16 the application of Section 3142 factors under the present
17 circumstances where the Government has appealed as of right
18 under 18, United States Code, Section 3731.

19 When the Government appeals a ruling dismissing the
20 charges, the prosecution doesn't simply go away. The
21 Government has a period of time to appeal, and the
22 Government has filed a notice of appeal preserving its
23 rights.

24 The Court did not enter an acquittal in this case.
25 Rather, the Government has exercised its right to pursue an

1 appeal seeking to preserve the charges.

2 While the Government observes that the prosecution of
3 the defendant is in a state of somewhat suspended animation
4 while the appeal plays out, the Government continues to
5 maintain the strong and lawful interest of vindicating the
6 charges returned by the grand jury in the appeals process.

7 The Government recognizes that the Court does have
8 broad discretion in how it applies the 3142 factors,
9 including the ability to remove all conditions of bond and
10 simply allow the defendant to be released on his own
11 recognizance. But having evaluated the factors contained in
12 3142, the Government believes that an unsecured bond with
13 minimal conditions is appropriate.

14 While the Court has routinely imposed its own -- sorry.
15 While the Court has routinely imposed what its own local
16 rules refer to as standard terms and conditions for release
17 on bond, the Government concedes that the Government -- that
18 the defendant does not pose a safety risk to the community,
19 nor does he have substance abuse concerns or anything like
20 that.

21 Rather, the two conditions that the Government
22 advocates for today are the standard conditions that the
23 defendant not leave the country and that he not contact,
24 either directly or indirectly, any victim or potential
25 witnesses in this case except through counsel.

1 These two conditions are specifically enumerated in
2 Section 3142(c) as suggested acceptable options for the
3 Court to consider when imposing the least restrictive
4 condition or combination of conditions that will reasonably
5 assure the appearance of the defendant.

6 In evaluating what conditions or combination of
7 conditions will reasonably ensure the defendant will appear
8 for proceedings, the Court evaluates 3242(g) -- 3142(g).

9 The first of those factors is the nature and
10 circumstances of the charges against the defendant. And
11 those charges are somewhat on a grand scale when considering
12 the economic impact his conduct has had on the victim
13 company Deloitte, on his employer, Sagitec, and on company
14 clients affected by the fallout of all of this.

15 For example, the defendant's conduct has spawned no
16 fewer than two federal civil lawsuits, one brought by
17 Deloitte in the District of Delaware, Case Number
18 1:23-cv-325, and a counter suit against Sagitec by the
19 Chicago's Teacher Pension Fund in the Northern District of
20 Illinois, 1:23-cv-1365. The defendant, almost certainly,
21 will be a witness in those civil cases.

22 The weight of the evidence against the defendant is
23 also immense. And with the Court's permission, the
24 Government offers to proffer five facts to support the
25 weight of the evidence factor if the Court would be so

1 inclined.

2 THE COURT: Go ahead.

3 MR. STORAGE: The Government proffers that
4 witnesses will testify that the defendant possessed Deloitte
5 source code and directed Sagitec employees to use that
6 software code to create a competing product.

7 Witnesses will testify that the defendant possessed an
8 external hard drive that contained the Deloitte code, along
9 with other proprietary data, and traveled to Pune, India
10 with it where it was uploaded to Sagitec servers for use in
11 the production of Sagitec's competing product.

12 Witnesses will testify that the defendant worked on the
13 Massachusetts UI project while he worked for Deloitte. And
14 after he left Deloitte and began working for Deloitte's
15 competitor, Sagitec, the defendant maintained project log-in
16 credentials for the Massachusetts system which was being
17 serviced by Deloitte so that he could duplicate features
18 within the Massachusetts system for the benefit of Sagitec's
19 competing product.

20 Additionally, witnesses will testify that the defendant
21 shared those Massachusetts log-in credentials with other
22 employees of Sagitec to further his goals.

23 And, lastly, the Government also processes evidence of
24 the defendant working with David Minkkinen, the
25 co-defendant, to edit and revise a letter sent to the Office

1 of the Maryland Attorney General which contained material
2 lies and misstatements about the work he had performed on
3 the Maryland-West Virginia UI Consortium Project.

4 The defendant's personal characteristics support
5 minimal conditions pending appeal. The defendant is a
6 person of substantial financial means as the Court can see
7 in the PSR.

8 Other than his two children, the United States doesn't
9 know of any other blood relatives that live in the United
10 States related to Mr. Sambasivam. All, or a substantial
11 number, of his family members live in India.

12 And, most importantly, the possibility of the defendant
13 leaving for India once his passport is returned to him is
14 not hypothetical. The defendant has stated to the Court in
15 his filings that he, in fact, does intend to travel to
16 India.

17 And, so, with all of that said, we believe that a
18 minimum set of conditions such as simply not leaving the
19 country pending appeal and not communicating with witnesses
20 or the victim, except through counsel pending appeal, are
21 the only two conditions the Government seeks at this time.
22 And we believe it's reasonable considering his substantial
23 ties to foreign countries and his significant financial
24 means as well.

25 THE COURT: Mr. Storage, are you asking the

1 Court -- and I want to be up front with you and let you know
2 in my reading of the Magistrate's order I have some issue
3 with being put in a position of presuming almost that he is
4 somewhat of a flight risk simply because he has family
5 living in another country.

6 MR. STORAGE: I understand that, Your Honor. And
7 the Government wants to be careful here. And as I stated in
8 the briefing, the Government isn't using the term "flight
9 risk," but we think that it is a factor that is listed in
10 the statute for consideration.

11 And the standard terms and conditions on release of
12 this Court, whether it's a person who lives in Nitro, West
13 Virginia, or in Charleston is that it's a standard condition
14 that the person's travel be restricted to the Southern
15 District of West Virginia unless otherwise directed by the
16 Court.

17 In this instance, Mr. Sambasivam's restriction to
18 travel is the entire continental United States. Other than
19 not going to Alaska or Hawaii, he can travel freely for
20 business for his own personal, for his own personal
21 relaxation and leisure except going out of the country.

22 And while I recognize that as of today he has not shown
23 any attempt to flee, he has not, as far as we know, changed
24 anything relating to his finances or his ownership of
25 assets.

1 However, it is a statutory standard to consider. We
2 believe that when you factor in his financial means, his
3 family ties, and the fact that he does intend to, in fact,
4 leave the country -- that's not a hypothetical, that he
5 wants his passport back so maybe he can go out of the
6 country. He does, in fact, want to go out of the country.
7 I think that is a relevant thing for the Court to consider.

8 THE COURT: The fact that, if I understand you
9 correctly, that you argue it to be a standard condition in
10 the district, does that not defeat the individualized
11 assessment that the Court should give to each individual
12 defendant in determining what, if any, condition should, in
13 fact, be imposed?

14 MR. STORAGE: No, I do not, I do not think so. I
15 think that the Court through its local rules has put the,
16 the bar and potential future defendants on notice that at
17 least as a starting point, restriction of travel is, is
18 assumed unless almost the defendant needs to show that
19 substantially he is not a flight risk.

20 What I am simply pointing out by bringing up the
21 standard conditions is that restriction of travel is almost
22 a given in 99 percent of cases before this Court. And while
23 I understand that Mr. Sambasivam lives in a different
24 district, the Government has not tried to impede his travel
25 within the continental United States. As far as I know, he

1 has had no difficulty with reporting to probation about his
2 travel.

3 And, so, we think that he has a freedom of movement
4 that is somewhat unusual in our district. And, so, that's
5 simply what the Government would like to point out.

6 THE COURT: All right. Thank you, Mr. Storage.

7 Ms. Robinson.

8 MS. ROBINSON: Your Honor, I do think that the
9 Government continues to confuse the standard here. There is
10 no flight risk. If they're going to establish a flight
11 risk, it has to be done by a preponderance of the evidence,
12 and not only that but a serious risk that the defendant will
13 flee the jurisdiction.

14 That's not what we're talking about here. If that's
15 what we're talking about, then the Government needs to come
16 forward with some evidence, not just maybe raise a doubt
17 that he may not return if in the unlikely event the Fourth
18 Circuit reinstates the charges against him.

19 It is not enough for them to stand up here and say he
20 has relatives in India, he has financial means; therefore,
21 he's a flight risk. That's simply not enough and that's one
22 standard. That's, that's as to whether, you know, we're
23 going to go down the path of the flight risk.

24 There is under 3142(b) the question as to whether the
25 Government has shown any evidence that would lead the

1 judicial officer to believe that there is some likelihood, a
2 preponderance I would, I would argue, that he will not
3 appear as required by the Court.

4 Flight risk and non-appearance are two different
5 things. And I think it's very important to keep those
6 separate and discuss those separately. One doesn't bleed
7 over into the other.

8 I've heard several different things. The Magistrate
9 Judge's order referenced a specter of a possibility of
10 non-appearance. I also don't believe that that is the
11 correct standard.

12 The Bail Reform Act recognizes the presumption of
13 innocence a person retains when they're charged by
14 indictment with a criminal offense. And the Bail Reform Act
15 recognizes that the Court should impose the least
16 restrictions upon an individual that will ensure a number of
17 different things. And right now for this proceeding, we're
18 simply talking about that he will appear in this court
19 should the charges be reinstated.

20 The Government today, Your Honor, asked the defendant
21 whether it objected to a 45-day continuance for it to file
22 its opening brief with the Fourth Circuit. That's an
23 indication that this appeal proceeding may drag on for a
24 long time.

25 We don't know how much longer Mr. Sambasivam will have

1 to be subject to some conditions of this Court not charged
2 with an offense. All charges against him have been
3 dismissed. So his freedom has been restricted and
4 maintains -- continues to be restricted with the Government
5 still not even prepared to file their opening brief on the
6 day that it's due.

7 I responded and asked if the Government was willing to
8 allow him to travel to India to practice his religion, to
9 see his extended family, including elderly aunts and elderly
10 uncles that he hasn't seen in over four years because of the
11 pandemic and because of the restrictions of this. The
12 Government has not yet responded as to what their position
13 on that will be.

14 With regard to the nature and seriousness of the
15 offense against him, the statute speaks to violence, crime
16 of violence, terrorism, serious offenses that may cause
17 concern about an individual being a danger to the community.

18 There's no question -- you know, one, he's not
19 currently charged with an offense. But the offenses that if
20 they did come back are not offenses of violence, not
21 offenses of terrorism, not offenses of the nature that would
22 require any further restrictions or conditions beyond a mere
23 personal recognizance or a bond unsecured without
24 conditions.

25 And I would, I would mention something to the Court.

1 Mr. Sambasivam has done nothing but comply with every single
2 condition of his bond to date. He was placed on bond in
3 September of 2022. Within four months -- and I will -- I
4 would like to make this as an exhibit, Your Honor, if I may
5 approach. This is a letter to Mr. Sambasivam dated
6 January 24th, 2023, from Olivia Sanders, United States
7 Probation Officer, advising him that he has met the criteria
8 for placement in the district's lowest intensity supervision
9 caseload. And if I may make that as an exhibit, Your Honor.

10 THE COURT: All right.

11 MS. ROBINSON: May I approach?

12 THE COURT: Yes, ma'am.

13 For purposes of the record, it will be marked, Ms.
14 Robinson, as your Exhibit Number 1.

15 MS. ROBINSON: Thank you, Your Honor.

16 He has complied to date with all conditions of bond.
17 And as the Court can see -- and I spoke to Ms. Sanders
18 yesterday and she confirmed that he's had no violations or
19 problems with him complying with his conditions from the
20 probation office. He reports in Minnesota and neither
21 office has had any problems with him.

22 But, but with regard to the nature of his charges, he
23 knew what he was facing even before the indictment. He had
24 counsel. He talked to the agents, was told he was a target.
25 If he was going to flee the jurisdiction, he was not going

1 to appear, he would have done it before then. He would have
2 done it before the United States reached over and indicted
3 him and, and took his passport and restricted his freedom.

4 He is here today and he has appeared at every single
5 hearing before Judge Aboulhosn where an appearance was
6 required by the Court. He's appeared by video on those
7 hearings where video was allowed by the Court and by the --
8 some of those hearings were, in fact, all video for all
9 counsel and defendant.

10 He has never failed to show up. He's never failed to
11 comply with the Court. He, in fact, if these charges do
12 come back, will vigorously defend them to restore his
13 reputation that has been irreparably damaged by the
14 indictment that's already, you know, out there and against
15 him.

16 He has vigorously defended. There is still currently
17 pending in front of this Court serious challenges to the
18 Government's indictment, its strength of its evidence which
19 Mr. Storage went over. I beg to differ. I don't think the
20 Government can prove that Mr. Sambasivam ever possessed any
21 property of Deloitte, proprietary, trade secret, or
22 otherwise. He's vigorously defending those. He has no
23 interest in ever not defending those.

24 With regard to his history and characteristics, I would
25 venture to guess he's been in the United States of America

1 and a United States citizen for almost as long as Mr.
2 Storage has been alive. He's been here for about 32 years.

3 He is an equity partner in a very serious on-going
4 business. He is married. He's the father of two. His two
5 children were born in the United States, are citizens of the
6 United States, live in Minnesota.

7 One is currently attending the University of Minnesota.
8 His daughter recently graduated from the University of
9 Minnesota, is an employee. His wife is employed by the
10 State of Minnesota. His core family, his life is here in
11 the United States of America. He owns his home in
12 Minnesota.

13 With regard to the other factors in 3142, no criminal
14 history, no arrest record, no drug abuse, no mental health
15 issues, no history of failure to appear in front of any
16 court or any body.

17 As I mentioned earlier, he was not on paper prior to
18 being charged in the recent charge. And if he was going to
19 flee, having been informed he was a target of a federal
20 indictment, he would have done so before the indictment was
21 ever brought. There's never been any hint that he's ever
22 been a danger to the community.

23 And regarding, Your Honor, his ties to the United
24 States, they are exponentially stronger than any of the ties
25 he has in India. He does have family there, of course, his

1 two brothers, his sister. He has elderly aunts and uncles.
2 He also travels to India to practice his faith, which he
3 practices here in the United States as well. But there are
4 holy and sacred temples, almost like pilgrimages, that he
5 would make routinely prior to the pandemic and prior to
6 being charged with the current offense.

7 We are asking that he is released, either put on, you
8 know, his own recognizance or an unsecured bond without any
9 conditions that would allow him to make that trip. And I
10 think that if there is any deterrence whatsoever, no
11 deterrence could be stronger than the fact that failure to
12 appear could in and of itself be an additional crime and
13 subject him to imprisonment when, in fact, I don't think
14 these charges ever will. So I believe that's, you know, one
15 of the strong deterrents here.

16 And for those reasons, I don't think that the
17 Government has established any basis whatsoever to restrict
18 Mr. Sambasivam for future travel.

19 May I have just a second?

20 THE COURT: Yes, ma'am.

21 (Ms. Robinson and the defendant conferred off the
22 record after which the following occurred:)

23 MS. ROBINSON: I would mention, Your Honor, prior
24 to the hearing -- I don't know if the Court had time to -- I
25 apologize for the late revisions, but we did provide the

1 Court and probation with a proposed itinerary for Mr.
2 Sambasivam's travel to India.

3 THE COURT: I did review it.

4 MS. ROBINSON: I'm sorry?

5 THE COURT: I did review it.

6 MS. ROBINSON: Thank you, Your Honor.

7 I would ask that the Court consider that which lays out
8 his purposes for visiting India which are, are so much more
9 reasonable and unlike the inference that Mr. Storage wants
10 to make with regard to his travel to India as it being some
11 way to evade the jurisdiction of this Court. You know,
12 those reasons cannot, cannot be doubted.

13 I mean, they're just reality. In real life he wants
14 to -- he had an uncle pass away. He wants to pay his
15 respects to his aunt who is still living in their family.
16 He wants to visit the graves of his parents and, you know,
17 practice his faith.

18 The fact that he -- well, I just don't think the
19 Government has met their burden to place any restrictions on
20 his current travel.

21 THE COURT: Ms. Robinson, are you asking that the
22 itinerary be made Exhibit 2?

23 MS. ROBINSON: Your Honor, I would ask that we be
24 able to submit a redacted copy that maybe perhaps redacts
25 some of the names and --

1 THE COURT: All right.

2 MS. ROBINSON: But I would like to have it as part
3 of the record --

4 THE COURT: All right.

5 MS. ROBINSON: -- if you would allow me an
6 opportunity this afternoon to submit a redacted copy.

7 THE COURT: That motion is granted and it will be
8 in the record marked as your Exhibit Number 2.

9 MS. ROBINSON: Thank you, Your Honor.

10 THE COURT: Mr. Storage, anything further, sir?

11 MR. STORAGE: Very briefly, Your Honor.

12 As it relates to what Ms. Robinson has suggested is the
13 Government's burden, I submit to the Court that the
14 Government does not have a burden here, preponderance or
15 otherwise.

16 I think that there is a reason why Ms. Robinson is
17 emphatic about throwing around the term "flight risk" and so
18 on is because preponderance of the evidence standard and
19 flight risk considerations are all a part of detention
20 hearing standards. That is under Paragraph (f) of 3142.

21 This is a bond hearing. The Government is not asking
22 for detention. We are not advocating that he is a flight
23 risk.

24 We are simply applying the 3142(b), (c), and (g)
25 factors as it relates to being released on bond or his own

1 recognition. It is the Court who makes the determination,
2 and it is the determination of the Court. The Government
3 has no standard to meet here other than to provide
4 information relevant to those factors to the Court. So I
5 submit that we have no burden.

6 THE COURT: All right. Thank you.

7 I will get you all a ruling fairly soon.

8 Anything further?

9 MR. STORAGE: No, Your Honor.

10 MS. ROBINSON: Yes, Your Honor.

11 In the event that the Court does consider favorably Mr.
12 Sambasivam's request that he be released from conditions
13 that restrict his travel, I would ask that the Court also
14 order the United States and probation to lift any potential
15 restrictions that may exist at the border so in the event if
16 he does travel, I believe there are certain notifications or
17 restrictions that may end up causing him to be detained
18 either entering or leaving the United States if those aren't
19 lifted. So I would like to make sure that that, in fact,
20 does get lifted.

21 I would also note for the Court that Magistrate Judge
22 Aboulhosn, one of the restrictions that he left in place was
23 that Mr. Sambasivam cooperate with the United States
24 Probation Office by providing information.

25 The probation office in the Southern District of West

1 Virginia and as applied in Minnesota reads that as still
2 requiring Mr. Sambasivam to supply them with monthly
3 reports.

4 Obviously, that's a lower, I mean, you know, a lesser
5 burden on him, but that is still a requirement that we don't
6 believe that he should be subjected to specifically, you
7 know, perhaps certainly if there's a change in residence or
8 a change in conditions, you know, to notify probation. But
9 I think that that is a condition that could be broadly read
10 or applied by probation in a way that's not intended by the
11 Court.

12 So just in the -- to the extent that there is specifics
13 in what is meant by cooperation with probation, I'd ask that
14 that be taken into consideration as well.

15 THE COURT: All right.

16 Mr. Storage, anything you want to say on that last
17 issue which hasn't previously been covered?

18 MR. STORAGE: No. The Government has no objection
19 to any of the other terms and conditions on release on bond
20 to be dispensed with but for travel restriction and
21 communicating with witnesses and victims.

22 THE COURT: You said that, Mr. Storage, in such a
23 tone that you thought even the Court should understand that
24 by now. Is that correct?

25 MR. STORAGE: To the extent that I came across

1 that way, I did not mean any disrespect to Your Honor, but,
2 yes.

3 THE COURT: I'm just teasing. You all have a good
4 afternoon.

5 MS. ROBINSON: Thank you, Your Honor.

6 And just one -- I'm sorry. One last thing with regard
7 to constitutionality. I do believe that there would be a
8 chance that if the Court hasn't fully been briefed and that
9 hasn't been argued before the Court and the Court to
10 consider it that the Fourth Circuit won't take that up on
11 appeal.

12 THE COURT: All right. You all have a good
13 afternoon.

14 MS. ROBINSON: Thank you, Your Honor.

15 MR. STORAGE: Thank you, Your Honor.

16 (Proceedings concluded at 2:09 p.m.)

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1 I, Lisa A. Cook, Official Reporter of the United
2 States District Court for the Southern District of West
3 Virginia, do hereby certify that the foregoing is a true and
4 correct transcript, to the best of my ability, from the
5 record of proceedings in the above-entitled matter.

6

7

8 s\Lisa A. Cook

August 21, 2023

9

Reporter

Date

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